

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

LINDABETH RIVERA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02714

Judge: Honorable Edmond E. Chang

Magistrate Judge Michael T. Mason

JOSEPH WEISS, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02870

Judge: Honorable Edmond E. Chang

Magistrate Judge Michael T. Mason

**MOTION FOR ENTRY OF ORDER RE: DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION**

Defendant Google Inc. (“Google”) hereby requests that the Court enter the Order Regarding Discovery of Electronically Stored Information, attached hereto as Exhibit 1. The section that is in dispute is Paragraph 5(e), which lists the categories of ESI that need not be searched, collected, reviewed, or preserved, absent a showing of good cause, in light of the Federal Rules on proportionality. Google has agreed to preserve ESI created or received as early as January 1, 2010, but would exclude ESI that is highly burdensome to retain or review and with less potential relevance (such as, for example, ephemeral data, audio and video recordings, automatically saved versions of documents and emails, and deleted data accessible only by

forensics) absent reason to believe that these data may contain relevant information. Google's proposed language is reasonable, feasible, and follows current form orders on the subject. Indeed, much of the language Google has proposed is borrowed from this Court's Proposed Standing Order Relating to the Discovery of Electronically Stored Information. See Standing Order at Principle 2.04 (Scope of Preservation), subsection (d); see also the 7th Circuit's Principles Relating to the Discovery of Electronically Stored Information, Principle 2.04 (Scope of Preservation), subsection (d), and the 7th Circuit's Proposed Discovery Plan for Electronically Stored Information at Para. 2(c).

Despite the fact that Google first proposed the language in 5(e) on April 27, 2017, Plaintiffs only redlined that language for the first time yesterday at approximately 9:00 p.m CT. In those proposed revisions to Paragraph 5(e), Plaintiffs propose that Google be required to preserve, collect, and review various categories of likely irrelevant information if, for example, the data "concern[s] Plaintiff Weiss or Plaintiff Rivera." Of course, Plaintiffs have given no reason to believe that the categories of data are likely to pertain to the Plaintiffs in this case or otherwise be especially relevant. Nor could Google determine anything about the contents of such data without the massive undertaking of preserving and reviewing all of it. Plaintiffs' proposed changes, that are currently in dispute, are in redline in the version attached hereto as Exhibit 2.

Plaintiffs' proposed revisions to Paragraph 5(e) impose the very burdens (incommensurate with the needs of this case) that Section 26(b)(2)(c) was designed to avoid. Categories of data that are difficult to access, extremely burdensome to review, and which do not obviously relate to the issues in this case are not suddenly rendered accessible simply with the rider "if they pertain to Plaintiffs." We have no reason to believe they do pertain to Plaintiffs,

but every reason to believe preservation, collection and review would be extremely burdensome. One of the primary purposes of an ESI order is to further the proportionality standard set forth in Federal Rule of Civil Procedure 26(b)(2)(c), by reducing the burden associated with discovery of ESI that is unlikely to yield any relevant information. *See, e.g.,* Seventh Circuit’s Model Order, Section 1.03. Plaintiffs’ revisions undermine this purpose, and should not be adopted. *See, e.g., Thermal Design, Inc. v. Guardian Bldg. Prod., Inc.*, No. 08-C-828, 2011 WL 1527025, at \*1 (E.D. Wis. Apr. 20, 2011) (denying motion to compel discovery of ESI because movant failed to explain why “the extensive amount of information it seeks is of such importance that it justifies imposing an extreme burden,” and further noting that courts “should not countenance fishing expeditions simply because the party resisting discovery can afford to comply”).

Google only learned of Plaintiffs’ proposed revisions at approximately 9:30 p.m. CT last night (despite having first shared this language with Plaintiffs in April). If the Court is inclined to adopt any of Plaintiffs’ revisions, Google respectfully requests an opportunity to further brief these issues prior to the entry of such an order.

Google has started and will continue producing documents to Plaintiffs, and does not intend to delay production of documents pending entry of an appropriate ESI order.

DATED: July 6, 2017

GOOGLE INC.,

By: /s/ Susan D. Fahringer

Susan D. Fahringer

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Attorneys for Defendant Google Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2017, I served the foregoing document, entitled **MOTION FOR ENTRY OF AGREED CONFIDENTIALITY ORDER**, upon the counsel identified below, via ECF, email service and United States mail, first class postage prepaid:

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I certify under penalty of perjury that the foregoing is true and correct.

/s/ Danielle Ballard

Danielle Ballard

Executed on July 6, 2017.

# **EXHIBIT 1**

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**UNITED STATES DISTRICT COURT  
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LINDABETH RIVERA, on behalf of herself  
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Civil Action No. 1:16-cv-2714

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GOOGLE INC.,

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Civil Action No. 1:16-cv-02870

Hon. Edmond E. Chang

Magistrate Michael T. Mason

**[PROPOSED] ORDER RE: DISCOVERY OF ELECTRONICALLY STORED  
INFORMATION**

**1. PURPOSE**

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, the Seventh Circuit’s Principles Relating to the Discovery of Electronically Stored Information, and any other applicable orders and rules.

1                   **2. COOPERATION**

2                   The parties are aware of the importance the Court places on cooperation and commit to  
3 cooperate in good faith throughout the matter consistent with the Seventh Circuit’s Principles  
4 Relating to the Discovery of Electronically Stored Information.

5                   **3. PROPORTIONALITY**

6                   Parties are expected to use reasonable, good faith and proportional efforts to preserve,  
7 identify and produce relevant information consistent with Federal Rules of Civil Procedure  
8 (“Rules”) 26(b)(1) and 26(b)(2)(C). This includes identifying appropriate limits to discovery,  
9 including limits on custodians, identification of relevant subject matter, time periods for  
10 discovery and other parameters to limit and guide preservation and discovery issues.

11                   **4. LIAISON**

12                   The parties have identified liaisons to each other who are and will be knowledgeable  
13 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
14 have access to those who are, knowledgeable about the technical aspects of e-discovery,  
15 including the location, nature, accessibility, format, collection, search methodologies, and  
16 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer  
17 about ESI and to help resolve disputes without court intervention.

18                   **5. PRESERVATION**

19                   The parties have discussed their preservation obligations and needs and agree that  
20 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the  
21 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 22                   a) Only ESI created or received between January 1, 2010 and March 1, 2016, will be  
23                   preserved. Without waiver of the attorney-client privilege and/or work product  
24                   protection, the parties affirm that they have implemented preservation processes  
25                   consistent with their obligations under the Federal Rules of Civil Procedure,  
26                   including as specifically identified below;
- 27                   b) The parties have agreed that within ten days of the filing of this Stipulation, they  
28                   will discuss the types of ESI they believe should be preserved and exchange a list of  
the custodians, or general job titles or descriptions of custodians, for whom they  
believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing  
manager.” The parties shall add or remove custodians as reasonably necessary;



- 1 c) The parties will agree within 10 days of the filing of this Stipulation on the number  
2 of custodians per party for whom ESI will be preserved;
- 3 d) Defendant has informed Plaintiffs that it believes these data sources are not  
4 reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P.  
5 26(b)(2)(B) and therefore ESI from these sources will be preserved only pursuant to  
6 normal business retention, and not searched, collected, reviewed, or produced for  
7 purposes of this litigation:
- 8 i. backup systems and/or tapes used for disaster recovery;
  - 9 ii. systems, server and network logs; and
  - 10 iii. systems no longer in use that cannot be accessed.
- 11 e) In furtherance of the Federal Rules on proportionality, the categories of ESI  
12 identified below need not be searched, collected, reviewed, or preserved, absent a  
13 showing of good cause:
- 14 i. voicemail messages;
  - 15 ii. information from handsets, mobile devices, personal digital assistants,  
16 and tablets that is duplicative of information that resides in a reasonably  
17 accessible data source;
  - 18 iii. instant messaging;
  - 19 iv. automatically saved versions of documents and emails;
  - 20 v. video and audio recordings;
  - 21 vi. deleted, slack, fragmented, or other data accessible only by forensics;
  - 22 vii. random access memory (RAM), temporary files, or other ephemeral data  
23 that are difficult to preserve without disabling the operating system;
  - 24 viii. online access data such as temporary internet files, history, cache,  
25 cookies, and the like;
  - 26 ix. dynamic fields of databases or log files that are not retained in the usual  
27 course of business;
  - 28 x. data in metadata fields that are frequently updated automatically, such as  
last opened dates;
  - xi. backup data that is substantially duplicative of data that is more  
accessible elsewhere; and
  - xii. other forms of ESI whose preservation requires extraordinary  
affirmative measures that are not utilized in the ordinary course of  
business.

## 5. SEARCH

- (a) The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or  
earlier if appropriate, they will meet and confer about methods to search ESI in order to

1 identify ESI that is subject to production in discovery and filter out ESI that is not subject to  
2 discovery.

3 (b) Each party will use its best efforts to filter out common system files and  
4 application executable files by using a commercially reasonable hash identification process.  
5 Hash values that may be filtered out during this process are located in the National Software  
6 Reference Library (“NSRL”) NIST hash set list. Additional culling of system file types based  
7 on file extension may include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4,  
8 AVI, WAV, C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf),  
9 Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading  
10 Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File  
11 (NICK), Office Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System  
12 File (dll), Temporary File (tmp), Windows Error Dump (dmp), Windows Media Player Skin  
13 Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc,  
14 .pud, .pyw), or Program Installers.

15 (c) Each party is required to produce only a single copy of a responsive document  
16 and each party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the  
17 document level) across custodians. For emails with attachments, the hash value is generated  
18 based on the parent/child document grouping. A party may also de-duplicate “near-duplicate”  
19 email threads as follows: In an email thread, only the final-in-time document need be  
20 produced, assuming that all previous emails in the thread are contained within the final  
21 message. Where a prior email contains an attachment, that email and attachment shall not be  
22 removed as a “near-duplicate.” To the extent that de-duplication through MD5 or SHA-1 hash  
23 values is not possible, the parties shall meet and confer to discuss any other proposed method  
24 of de-deduplication.

## 25 **6. PRODUCTION FORMATS**

26 The parties agree to produce documents in the formats described in Appendix 1 to this  
27 Order. If particular documents warrant a different format, the parties will cooperate to arrange  
28

1 for the mutually acceptable production of such documents. The parties agree not to degrade the  
2 searchability of documents as part of the document production process.

### 3 4 **7. PHASING**

5 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties  
6 agree to phase the production of ESI to the extent the immediate production of all responsive  
7 ESI is not feasible. Following any initial production of a phased ESI production pursuant to  
8 this Section, the parties will meet and confer regarding prioritizing the order of subsequent  
9 productions. Nothing contained herein should be construed as an agreement by the parties that  
10 discovery should be segmented or bifurcated.

### 11 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

- 12 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-  
13 protected document, whether inadvertent or otherwise, is not a waiver of privilege  
14 or protection from discovery in this case or in any other federal or state proceeding.  
15 For example, the mere production of privileged or work-product-protected  
16 documents in this case as part of a mass production is not itself a waiver in this case  
17 or in any other federal or state proceeding.
- 18 b) Communications involving counsel that post-date the filing of the complaint need  
19 not be placed on a privilege log. Communications may be identified on a privilege  
20 log by category, rather than individually, if appropriate.
- 21 c) Nothing in this Agreement shall be interpreted to require disclosure of information  
22 protected by the attorney-client privilege, work-product doctrine, or any other  
23 applicable privilege or immunity. The parties do not waive any objections to the  
24 production, discoverability, admissibility, or confidentiality of documents and ESI.

### 25 **9. MODIFICATION**

26 This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
27 Court for good cause shown.

28 **IT IS SO STIPULATED**, through Counsel of Record.

Dated: \_\_\_\_\_

Counsel for Plaintiffs

1 Dated:

2 \_\_\_\_\_  
3 Counsel for Defendant GOOGLE INC.

4 **IT IS ORDERED** that the forgoing Agreement is approved.

5 Dated:

6 \_\_\_\_\_  
7 UNITED STATES DISTRICT/MAGISTRATE JUDGE  
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**APPENDIX 1**  
**PRODUCTION FORMAT AND METADATA**

1. **Production Components.** Productions shall include single page TIFFs, Text Files, an ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded into commercially acceptable production software (e.g., Concordance).
2. **Image Load File** shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX BREAK, PAGE COUNT.
3. **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth below that can be extracted shall be produced for each document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN. The metadata file shall be delimited according to the following characters:
  - Delimiter = ¶ (ASCII:020)
  - Text-Qualifier = þ (ASCII:254)
  - New Line = ® (ASCII:174)

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Includes the Individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	All recipients that were included on the “To” line of the email
FROM	The name and email address of the sender of the email

CC	All recipients that were included on the “CC” line of the email
BCC	All recipients that were included on the “BCC” line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME	Filename of an electronic document (Edoc or attachment)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc or attachment)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
NATIVELINK	Native File Link (Native Files only)

4. **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents. Each TIFF image shall be named according to a unique corresponding Bates number associated with the document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). TIFFs shall show all text and images that would be visible to a user of the hard copy documents.
5. **Text Files.** A single multi-page text file shall be provided for each document, and the filename should match its respective TIFF filename. A commercially acceptable technology for optical character recognition (“OCR”) shall be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents and OCR text files will be substituted instead of extracted text files for redacted documents.
6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production’s data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production’s image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
7. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential

1 within a given document and across the production sets.

2 8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped  
3 with the appropriate confidentiality designations in accordance with the Protective Order  
4 in this matter. Each responsive document produced in native format will have its  
5 confidentiality designation identified in the filename of the native file.

6 9. **Redaction Of Information.** If documents are produced containing redacted information,  
7 an electronic copy of the original, unredacted data shall be securely preserved in such a  
8 manner so as to preserve without modification, alteration or addition the content of such  
9 data including any metadata therein.

10 10. **NATIVE FILE PRODUCTIONS.** Spreadsheets (e.g., MS Excel, Google Sheets) and  
11 delimited text files (e.g. comma-separated value (.csv) files and tab-separated value (.tsv)  
12 files) shall be produced in their native file format. TIFF images need not be produced  
13 unless the files have been redacted, in which instance such files shall be produced in  
14 TIFF with OCR Text Files. If good cause exists to request production of files, other than  
15 those specifically set forth above, in native format, the party may request such production  
16 and provide an explanation of the need for native file review, which request shall not  
17 unreasonably be denied. Any native files that are produced shall be produced with a link  
18 in the NativeLink field, along with extracted text and applicable metadata fields set forth  
19 in Appendix 1. A TIFF placeholder indicating that the document was provided in native  
20 format should accompany the database record. If a file has been redacted, TIFF images  
21 and OCR text of the redacted document will suffice in lieu of a native file and extracted  
22 text.

23 11. **Proprietary Files.** To the extent a response to discovery requires production of ESI  
24 accessible only through proprietary software, the parties should continue to preserve each  
25 version of such information. The parties shall meet and confer to finalize the appropriate  
26 production format.

27 12. **Production Media.** Documents shall be produced on external hard drives, readily  
28 accessible computer(s) or other electronic media ("Production Media"). Each piece of  
Production Media shall identify a production number corresponding to the production  
volume (e.g., "VOL001," "VOL002"), as well as the volume of the material in that  
production (e.g. "-001," "-002"). Each piece of Production Media shall also identify: (1)  
the producing party's name; (2) the production date; (3) the Bates Number range of the  
materials contained on the Production Media; and (4) the set(s) of requests for production  
for which the documents are being produced.

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This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, the Seventh Circuit’s Principles Relating to the Discovery of Electronically Stored Information, and any other applicable orders and rules.



1           **2. COOPERATION**

2           The parties are aware of the importance the Court places on cooperation and commit to  
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6           Parties are expected to use reasonable, good faith and proportional efforts to preserve,  
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8 (“Rules”) 26(b)(1) and 26(b)(2)(C). This includes identifying appropriate limits to discovery,  
9 including limits on custodians, identification of relevant subject matter, time periods for  
10 discovery and other parameters to limit and guide preservation and discovery issues.

11          **4. LIAISON**

12          The parties have identified liaisons to each other who are and will be knowledgeable  
13 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
14 have access to those who are, knowledgeable about the technical aspects of e-discovery,  
15 including the location, nature, accessibility, format, collection, search methodologies, and  
16 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer  
17 about ESI and to help resolve disputes without court intervention.

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19          The parties have discussed their preservation obligations and needs and agree that  
20 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the  
21 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 22          a) Only ESI created or received between January 1, 2010 and March 1, 2016, as well  
23 any ESI responsive to a party’s request(s) for production that is known to exist by  
24 the other party regardless of the date such ESI was created or received, will be  
25 preserved. Without waiver of the attorney-client privilege and/or work product  
26 protection, the parties affirm that they have implemented preservation processes  
27 consistent with their obligations under the Federal Rules of Civil Procedure,  
28 including as specifically identified below;
- b) The parties have agreed that within ten days of the filing of this Stipulation, they  
will discuss the types of ESI they believe should be preserved and exchange a list of  
the custodians, or general job titles or descriptions of custodians, for whom they  
believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing

- manager.” The parties shall add or remove custodians as reasonably necessary;
- c) The parties will agree within 10 days of the filing of this Stipulation on the number of custodians per party for whom ESI will be preserved;
- d) Defendant has informed Plaintiffs that it believes these data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and therefore ESI from these sources will be preserved only pursuant to normal business retention, and not searched, collected, reviewed, or produced for purposes of this litigation:
- i. backup systems and/or tapes used for disaster recovery;
  - ii. systems, server and network logs; and
  - iii. systems no longer in use that cannot be accessed.
- e) In furtherance of the Federal Rules on proportionality, the categories of ESI identified below need not be searched, collected, reviewed, or preserved, absent a showing of good cause:
- i. voicemail messages;
  - ii. information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;
  - iii. instant messaging, except with respect to instant messages transmitted in the ordinary course of business concerning the subject matter of this litigation, e.g., messages exchanged between computer developers or programmers concerning the development or functionality of any facial recognition technology potentially implicated by this litigation;
  - iv. automatically saved versions of documents and emails, to the extent duplicative of another document or email;
  - v. deleted, slack, fragmented, or other data accessible only by forensics, except with respect to any data stored or accessed in connection with any facial recognition technology potentially implicated by this litigation or any such data concerning Plaintiff Weiss or Plaintiff Rivera;
  - vi. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system, except with respect to any memory, files or data stored or accessed in connection with any facial recognition technology potentially implicated by this litigation or any such memory, files or data concerning Plaintiff Weiss or Plaintiff Rivera;
  - vii. online access data such as temporary internet files, history, cache, cookies, and the like;
  - viii. dynamic fields of databases or log files that are not retained in the usual course of business, except as to any dynamic fields pertaining to an individual’s consent to being subjected to any facial recognition

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technology potentially implicated by this litigation;

ix. data in metadata fields that are frequently updated automatically, such as last opened dates;

x. backup data that is substantially duplicative of data that is more accessible elsewhere; and

xi. other forms of ESI whose preservation requires extraordinary affirmative measures that are not utilized in the ordinary course of business.

## 5. SEARCH

(a) The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

(b) Each party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the National Software Reference Library ("NSRL") NIST hash set list. Additional culling of system file types based on file extension may include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4, AVI, WAV, C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System File (dll), Temporary File (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), or Program Installers.

(c) Each party is required to produce only a single copy of a responsive document and each party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the document level) across custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. A party may also de-duplicate "near-duplicate" email threads as follows: In an email thread, only the final-in-time document need be

**Formatted:** Indent: Left: 1.25", Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Right + Aligned at: 1" + Indent at: 1.25"

1 produced, assuming that all previous emails in the thread are contained within the final  
2 message. Where a prior email contains an attachment, that email and attachment shall not be  
3 removed as a “near-duplicate.” To the extent that de-duplication through MD5 or SHA-1 hash  
4 values is not possible, the parties shall meet and confer to discuss any other proposed method  
5 of de-deduplication.

#### 6 **6. PRODUCTION FORMATS**

7 The parties agree to produce documents in the formats described in Appendix 1 to this  
8 Order. If particular documents warrant a different format, the parties will cooperate to arrange  
9 for the mutually acceptable production of such documents. The parties agree not to degrade the  
10 searchability of documents as part of the document production process.

#### 11 **7. PHASING**

12 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties  
13 agree to phase the production of ESI to the extent the immediate production of all responsive  
14 ESI is not feasible. Following any initial production of a phased ESI production pursuant to  
15 this Section, the parties will meet and confer regarding prioritizing the order of subsequent  
16 productions. Nothing contained herein should be construed as an agreement by the parties that  
17 discovery should be segmented or bifurcated.

#### 18 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

- 19 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-  
20 protected document, whether inadvertent or otherwise, is not a waiver of privilege  
21 or protection from discovery in this case or in any other federal or state proceeding.  
22 For example, the mere production of privileged or work-product-protected  
23 documents in this case as part of a mass production is not itself a waiver in this case  
24 or in any other federal or state proceeding.
- 25 b) Communications involving counsel that post-date the filing of the complaint need  
26 not be placed on a privilege log. Communications may be identified on a privilege  
27 log by category, rather than individually, if appropriate.
- 28 c) Nothing in this Agreement shall be interpreted to require disclosure of information  
protected by the attorney-client privilege, work-product doctrine, or any other  
applicable privilege or immunity. The parties do not waive any objections to the  
production, discoverability, admissibility, or confidentiality of documents and ESI.

1       **9. MODIFICATION**

2           This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
3 Court for good cause shown.

4           **IT IS SO STIPULATED**, through Counsel of Record.

5  
6 Dated:

\_\_\_\_\_

Counsel for Plaintiffs

7  
8 Dated:

\_\_\_\_\_

Counsel for Defendant GOOGLE INC.

9  
10       **IT IS ORDERED** that the forgoing Agreement is approved.

11  
12 Dated:

\_\_\_\_\_

UNITED STATES DISTRICT/MAGISTRATE JUDGE

**APPENDIX 1**  
**PRODUCTION FORMAT AND METADATA**

1. **Production Components.** Productions shall include single page TIFFs, Text Files, an ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded into commercially acceptable production software (e.g., Concordance).
2. **Image Load File** shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX BREAK, PAGE COUNT.
3. **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth below that can be extracted shall be produced for each document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN. The metadata file shall be delimited according to the following characters:
  - Delimiter = ¶ (ASCII:020)
  - Text-Qualifier = þ (ASCII:254)
  - New Line = ® (ASCII:174)

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Includes the Individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	All recipients that were included on the “To” line of the email
FROM	The name and email address of the sender of the email

CC	All recipients that were included on the “CC” line of the email
BCC	All recipients that were included on the “BCC” line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME	Filename of an electronic document (Edoc or attachment)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc or attachment)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
NATIVELINK	Native File Link (Native Files only)

4. **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents. Each TIFF image shall be named according to a unique corresponding Bates number associated with the document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). TIFFs shall show all text and images that would be visible to a user of the hard copy documents.
5. **Text Files.** A single multi-page text file shall be provided for each document, and the filename should match its respective TIFF filename. A commercially acceptable technology for optical character recognition (“OCR”) shall be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents and OCR text files will be substituted instead of extracted text files for redacted documents.
6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production’s data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production’s image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
7. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential

1 within a given document and across the production sets.

2 8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped  
3 with the appropriate confidentiality designations in accordance with the Protective Order  
4 in this matter. Each responsive document produced in native format will have its  
5 confidentiality designation identified in the filename of the native file.

6 9. **Redaction Of Information.** If documents are produced containing redacted information,  
7 an electronic copy of the original, unredacted data shall be securely preserved in such a  
8 manner so as to preserve without modification, alteration or addition the content of such  
9 data including any metadata therein.

10 10. **NATIVE FILE PRODUCTIONS.** Spreadsheets (e.g., MS Excel, Google Sheets) and  
11 delimited text files (e.g. comma-separated value (.csv) files and tab-separated value (.tsv)  
12 files) shall be produced in their native file format. TIFF images need not be produced  
13 unless the files have been redacted, in which instance such files shall be produced in  
14 TIFF with OCR Text Files. If good cause exists to request production of files, other than  
15 those specifically set forth above, in native format, the party may request such production  
16 and provide an explanation of the need for native file review, which request shall not  
17 unreasonably be denied. Any native files that are produced shall be produced with a link  
18 in the NativeLink field, along with extracted text and applicable metadata fields set forth  
19 in Appendix 1. A TIFF placeholder indicating that the document was provided in native  
20 format should accompany the database record. If a file has been redacted, TIFF images  
21 and OCR text of the redacted document will suffice in lieu of a native file and extracted  
22 text.

23 11. **Proprietary Files.** To the extent a response to discovery requires production of ESI  
24 accessible only through proprietary software, the parties should continue to preserve each  
25 version of such information. The parties shall meet and confer to finalize the appropriate  
26 production format.

27 12. **Production Media.** Documents shall be produced on external hard drives, readily  
28 accessible computer(s) or other electronic media ("Production Media"). Each piece of  
Production Media shall identify a production number corresponding to the production  
volume (e.g., "VOL001," "VOL002"), as well as the volume of the material in that  
production (e.g. "-001," "-002"). Each piece of Production Media shall also identify: (1)  
the producing party's name; (2) the production date; (3) the Bates Number range of the  
materials contained on the Production Media; and (4) the set(s) of requests for production  
for which the documents are being produced.



## **EXHIBIT 2**